

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

INTERVET INC., and	)	
BTG INTERNATIONAL LIMITED	)	
	)	
Plaintiffs	)	
	)	Civil Action No.: 05-887
v.	)	
	)	<b>JURY TRIAL DEMANDED</b>
MERIAL LIMITED,	)	
	)	
Defendant.	)	

**AMENDED COMPLAINT**

Plaintiffs Intervet Inc. ("Intervet") and BTG International Limited ("BTG") demand a trial by jury on all issues so triable and by way of this Complaint against defendant Merial Limited ("Merial"), upon knowledge as to their own acts, and upon information and belief as to all other matters, hereby alleges as follows:

**THE PARTIES**

1. Plaintiff Intervet is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 29160 Intervet Lane, Millsboro, Delaware.

2. Plaintiff BTG is a company registered in England with number 2664412 (formerly known as British Technology Group Limited), with its principal place of business at 10 Fleet Place, Limeburner Lane, London EC4M 7SB.

3. Merial is a company organized and existing under the laws of England and domesticated in the state of Delaware as Merial LLC, with a principal place of business at 3239 Satellite Boulevard, Duluth, GA 30096.

### **JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the U.S. Patent Laws, Title 35 U.S.C. § 1 *et seq.* This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338.

5. Defendant Merial sells or causes to be sold veterinary pharmaceuticals or vaccines in this judicial district and is thereby doing business in this judicial district and subject to personal jurisdiction in this judicial district.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b).

### **COUNT ONE – PATENT INFRINGEMENT**

7. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 5 as if set forth herein.

8. This is an action for patent infringement, based upon Merial's infringement of U.S. Patent No. 5,587,166 ("the '166 patent"). A true and correct copy of the '166 patent is attached as Exhibit A hereto.

9. The '166 patent is entitled "Vaccines against Pasteurella" and was duly and legally issued by the United States Patent and Trademark Office on December 24, 1996.

10. The '166 patent is assigned to British Technology Group Limited, now BTG.

11. Intervet is an exclusive licensee of the '166 patent with the right to enforce the '166 patent and to recover damages for infringement of the '166 patent.

12. Defendant Merial manufactures, offers for sale and/or sells vaccines against Pasteurella, including, for example, Respishield<sup>TM</sup> HM, as part of Merial's SUREHEALTH<sup>TM</sup> program. Defendant Merial also induces the use of these vaccines by

offering them for sale and/or selling them for use in the vaccination of cattle to aid in the prevention of respiratory disease caused by Pasteurella.

13. Defendant Merial has infringed, and continues to infringe the '166 patent directly, contributorily, and/or by inducing others to infringe the '166 patent, by making, using, offering for sale, and selling vaccines against Pasteurella, at least one of which is Respishield<sup>TM</sup> HM, within the scope of one or more claims of the '166 patent.

14. Defendant Merial's infringement has been and continues to be willful, without license, and carried out with full knowledge of the '166 patent.

15. Defendant Merial will continue their acts of infringement unless restrained and enjoined by this Court.

16. Should Defendant Merial be permitted to continue infringement of the '166 patent, the resulting damage to Plaintiffs will be substantial and irreparable. Plaintiffs have no adequate remedy at law.

**WHEREFORE**, Plaintiffs request a judgment as follows:

- (a) declaring that Merial has infringed the '166 patent, directly and/or indirectly by way of inducing and/or contributing to the infringement of the '166 patent;
- (b) declaring that Merial's infringement has been willful;
- (c) permanently enjoining Merial, its officers, directors, affiliates, agents, servants, employees and attorneys, and all those persons in active concert or participation with defendant, from infringing the '166 patent;
- (d) awarding Plaintiffs damages under 35 U.S.C. §284, including treble damages for willful infringement as provided by 35 U.S.C. §284, as compensation for

infringement of the '166 patent, such award including pre-judgment interest and post-judgment interest;

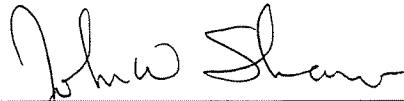
(e) declaring this to be an exceptional case and requiring Merial to pay the cost of this action (including all disbursements) and attorneys fees as provided by 35 U.S.C. §285; and

(f) awarding Plaintiffs such further relief as this Court or jury may deem just and equitable.

### **JURY TRIAL DEMAND**

Plaintiffs hereby demand a trial by jury on all issues so triable that are presented in this lawsuit.

Respectfully submitted,



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Dated: April 11, 2006

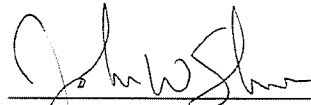
**CERTIFICATE OF SERVICE**

I, John W. Shaw, hereby certify that on April 11, 2006, copies of the foregoing document were caused to be served upon the following counsel of record in the manner indicated below:

**BY HAND DELIVERY**

Merial Limited  
c/o Delaware Secretary of State  
Division of Corporations  
John G. Townsend Bldg.  
401 Federal Street – Suite 4  
Dover, DE 19901

Merial LLC  
o/b/o Merial Limited  
c/o Registered Agent  
The Corporation Trust Company  
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